

REMARKS

Applicant respectfully requests reconsideration and allowance of the subject application. Applicant believes this communication to be fully responsive to all of the issues raised in the 11/27/06 Office Action.

Communication with the Examiner

Applicant appreciates Examiner Pannala's willingness to discuss the present application with Applicant's Attorney, Paul Mitchell, on 11/20/06. The various objections and rejections were discussed as well as potential clarifying claim amendments. An agreement was reached for overcoming the objections and the §101 rejections. No agreement was reached for overcoming the rejections based upon the art of record. The clarifying claim amendments contained in this communication are consistent with the options discussed during the interview.

Drawing Objections

The Objection pointed out by the Examiner related to element 535 is addressed above as an amendment to the drawings (Fig. 5). A corresponding replacement drawing sheet accompanies this communication and Applicant respectfully requests that the drawing objection be withdrawn.

Specification Objections

1 The Office objects to the use of “transport” and “transport vehicle”
2 terminology in the claims. Without conceding the propriety of the stated objection,
3 and only to expedite prosecution of this application, Applicant has amended the
4 terms “transport” and “transport vehicle” to “data protocol” in the pending claims
5 as suggested by the Office. Accordingly, Applicant respectfully requests that the
6 objection be withdrawn.

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9 **§ 101 Rejections**

10 The Office Action rejects claims 1-15 under 35 U.S.C. § 101 as allegedly
11 being directed to non-statutory subject matter. Without conceding the propriety of
12 the stated rejection, and only to expedite prosecution of this application, Applicant
13 has amended independent claims 1 and 11 as suggested by the Office.
14 Accordingly, Applicant respectfully requests that the objection be withdrawn.

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17 **§ 103 Rejections**

18 The Office Action rejects claims 1-15 under 35 U.S.C. § 103(a), as being
19 unpatentable over U.S. Patent No. 6,665,729 to Walker, et al. (hereinafter,
20 “Walker”) in view of U.S. Patent Publication No. 2004/0001514 to Wookey, et al.
21 (hereinafter, “Wookey”).

22 **Claim 1** is directed to a process and recites:

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24 • determining a size of a data structure;

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1 • selecting a data streaming protocol when the size exceeds a
2 predetermined limit;
3 • selecting a buffered data protocol otherwise;
4 • sending the data structure consistent with the selected protocol.

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6 Applicant submits that the Office has failed to establish a §103 rejection of
7 claim 1 at least for insufficient motivation for the Office's proposed combination
8 of Walker and Wookey. The record contains insufficient motivation in that the
9 proposed combination renders the primary reference (Walker) inoperable. Walker
10 describes reducing system delays for whatever protocol is employed on the system.
11 Specifically, in relation to Col. 5 and Fig. 4, Walker describes: receiving a packet,
12 and examining a packet header to determine a protocol employed by the server. If
13 a streaming protocol is employed by the server no further action is taken (i.e., the
14 client acts in a traditional manner). If a transaction based protocol is being
15 employed the client takes actions to decrease latency in receiving a last packet of a
16 set of packets. In no instance, does Walker describe selecting a protocol at all. In
17 fact, the overall purpose of Walker is to decrease network latency with whatever
18 protocol is being utilized. Accordingly, Walker does not teach any protocol
19 selecting process. Further, the Office's proposal to bring in a selection process
20 from Wookey would defeat Walker's described invention of decreasing network
21 latency with whatever protocol comes down the line. At the very least, Walker
22 teaches directly away from the proposed combination. For these reasons,
23 insufficient motivation exists in the record for the Office's proposed combination.
24 Accordingly, Applicant respectfully requests that the §103 rejection of claim 1 be
25 withdrawn.

1 **Claims 2-10** depend from allowable claim 1. These claims are also
2 allowable for their own recited features which, in combination with those recited
3 in claim 1, are neither disclosed nor suggested by the references cited and applied
4 by the Office.

5 **Claim 11** is directed to a system for handling messages and recites:

6 • means for determining a size of a data structure;
7 • means for selecting a data streaming protocol when the size exceeds
8 a predetermined limit;
9 • means for selecting a buffered data protocol when the size does not
10 exceed the predetermined limit;
11 • means for sending the data structure utilizing the selected protocol.

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13 Applicant submits that the Office has failed to establish a §103 rejection of
14 claim 11 at least for insufficient motivation for the Office's proposed combination
15 of Walker and Wookey. The record contains insufficient motivation in that the
16 proposed combination renders the primary reference (Walker) inoperable. Walker
17 describes reducing system delays for whatever protocol is employed on the system.
18 Specifically, in relation to Col. 5 and Fig. 4, Walker describes: receiving a packet,
19 and examining a packet header to determine a protocol employed by the server. If
20 a streaming protocol is employed by the server no further action is taken (i.e., the
21 client acts in a traditional manner). If a transaction based protocol is being
22 employed the client takes actions to decrease latency in receiving a last packet of a
23 set of packets. In no instance, does Walker describe selecting a protocol at all. In
24 fact, the overall purpose of Walker is to decrease network latency with whatever
25 protocol is being utilized. Accordingly, Walker does not teach any protocol

1 selecting process. Further, the Office's proposal to bring in a selection process
2 from Wookey would defeat Walker's described invention of decreasing network
3 latency with whatever protocol comes down the line. At the very least, Walker
4 teaches directly away from the proposed combination. For these reasons,
5 insufficient motivation exists in the record for the Office's proposed combination.
6 Accordingly, Applicant respectfully requests that the §103 rejection of claim 11 be
7 withdrawn.

8 **Claims 12-15** depend from allowable claim 11. These claims are also
9 allowable for their own recited features which, in combination with those recited
10 in claim 11, are neither disclosed nor suggested by the references cited and applied
11 by the Office.

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1 **Conclusion**

2 Applicant respectfully requests reconsideration and withdrawal of the
3 rejections of the pending claims. If personal discussion would advance
4 prosecution of this application, the Office is urged to contact the undersigned
5 attorney before issuing a subsequent Action.

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9 Respectfully Submitted,

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14 Dated: 12/5/06

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